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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,809	05/24/2001	Gerard Jay Bellasalma	60137-026	2588

26096 7590 02/05/2004

CARLSON, GASKEY & OLDS, P.C.  
400 WEST MAPLE ROAD  
SUITE 350  
BIRMINGHAM, MI 48009

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance  
With 37 CFR 1.192(c)**

Application No.

09/864,809

Applicant(s)

BELLASALMA ET AL.

Examiner

David L. Sorkin

Art Unit

1723

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 13 January 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☒ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
  - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
  - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☒ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

see Detailed Explanation

**Notice of Non-compliance with 37 CFR 1.192(c)**

1. The amendment filed 13 January 2004 has been entered. The USPTO considers that claims 1-12, 14, 16-22 and 26-31 are pending and that claims 13, 15, and 23-25 are canceled. Claims 1-12, 14, 16-22 and 26-31 remain finally rejected as set forth in the office action mailed 18 March 2003.
2. Appellant's brief lists claim 13 as both "pending" and "canceled". Appellant should take a clear position regarding the status of this claim.
3. It is unclear what claims are being appealed. It is suggested that the brief simply state: "claims 1-12, 14, 16-22 and 26-31 are being appealed", if such is the case. Appellant should not appeal canceled claims. The inclusion of the grouping of claims in the "Status of Claims" adds to the confusion regarding what claims are being appealed.
4. MPEP 1206 reads as follows "An appellant's brief must being responsive to every ground of rejection stated by the examiner. Where an appeal brief fails to address any ground of rejection, appellant shall be notified by the examiner that he or she must correct the defect by filing a brief (in triplicate) in compliance with 37 CFR 1.192(c)." The brief fails to respond to the section 103(a) rejection of claims 8-10, 12, 14, 16, 20 and 21 as being unpatentable over Larsen (US 1,196,121). The brief must address this rejection as an "Issue" (see 37 CFR 1.192(c)(6)) and must provide arguments corresponding thereto (see 37 CFR 1.192(c)(8)).
5. Appellant should update the "status of amendments" section to reflect the entry of the amendment filed 13 January 2004. Now-canceled claims 13 and 15 should be omitted from the, "issues", "grouping of claims" and "arguments".

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6. 37 CFR 1.192(c)(7) begins "For each ground of rejection which appellant contests..."; therefore, appellant should explain how any claim groupings relate to the individual issues. It is recommended that appellant provided a separate grouping statement for each issue. The current omnibus grouping statement is confusing when the claims are considered issue-by-issue.

7. In the "arguments", the brief makes inaccurate statements concerning what claims are rejected under section 102(b) as being anticipated by Larsen (1,196,121). See pages 6 and 7 of the brief. Only claims 1-7, 17-19, 26, 28, 30 and 31 were rejected under section 102 (b) as being anticipated by Larsen (1,196,121).

8. In the "arguments", the brief lists claim 6 with regard to the rejection under section 102 (b) as being anticipated by Paulson (US 887,120). See page 8 of the brief. Only claims 1-5, 7-10, 12-21, 26, 28, 30 and 31 were rejected under section 102 (b) as being anticipated by Paulson (US 887,120), of which claims 13 and 15 are now canceled.

Appellant is required to comply with provisions of 37 CFR 1.192(c).

To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 1.192(c) within the longest of any of the following TIME PERIODS: (1) ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication; (2) within the time period for reply to the action from which appeal has been taken; or (3) within two months from the date of the notice of appeal under 37 CFR 1.191. Extensions of these time periods may be granted under 37 CFR 1.136.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin



CHARLES E. COOLEY  
PRIMARY EXAMINER